

REMARKS

This Amendment is submitted in reply to the non-final Office Action dated December 14, 2009. No fees are due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-00491 on the account statement.

Claims 10-12, 14, 16, 18 and 22-46 are pending in this application. Claims 1-9, 13, 15, 17 and 19 were previously canceled without prejudice or disclaimer. Claims 25-37 were previously withdrawn from consideration. In the Office Action, Claim 12 is objected to. Claims 10-12, 14, 16, 22-24 and 38-46 are rejected under 35 U.S.C. §112. Claims 10-12, 14, 16, 18 and 20-24 are rejected under 35 U.S.C. §103. In response, Claims 10, 16, 38, 42 and 46 have been amended and Claim 12 has been canceled without prejudice or disclaimer. The amendments do not add new matter and are supported in the specification at, for example, page 4, lines 27-30; and Example 2. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 12 is objected to under 37 CFR 1.75(c), as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. See, Office Action, page 2, lines 11-12. In response, Applicants have canceled Claim 12 without prejudice or disclaimer. For at least the reasons set forth above, Applicants respectfully request that the objection to Claim 12 is rendered moot.

Accordingly, Applicants respectfully request that the objection to Claim 12 be reconsidered and withdrawn.

In the Office Action, Claims 10-12, 14, 16, 22-24 and 38-46 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Patent Office alleges that "it is not clear as to how the blood would have remained powdered or frozen, especially since the specification indicates that the dry ingredients are mixed with water and subsequently a pasty material has been formed." See, Office Action, page 3, lines 12-15. Applicants respectfully disagree and submit that the present claims fully comply with the enablement requirement of 35 U.S.C. §112, first paragraph.

An analysis of whether a particular claim is supported by the disclosure in an application requires a determination of whether that disclosure, when filed, contained sufficient information regarding the subject matter of the claims as to enable one skilled in the pertinent art to make and use the claimed invention. The standard for determining whether the specification meets the enablement requirement is whether the experimentation needed to practice the invention is undue or unreasonable. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988). A patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991). Applicants submit that the skilled artisan would be more than capable of practicing the presently claimed invention without undue burden.

For example, Applicants first note that the present claims do not recite “a colorant selected from powdered blood, frozen blood and combinations thereof,” as alleged by the Patent Office. See, Office Action, page 3, lines 11-12. Instead, independent Claims 10, 38 and 46 recite, in part, that the coating comprises “at least one source of pigments or colorants selected from the group consisting of a powdered blood, a frozen blood and combinations thereof.” See, independent Claims 10, 38 and 46 (emphasis added). Accordingly, Applicants respectfully submit that, regardless of whether a “pasty material” is formed or not, the skilled artisan would immediately appreciate that the source of the pigment could be different (e.g., powdered blood or frozen blood) and that the coating of the food composition may have a coating comprising a source of powdered blood or a source of frozen blood. Thus, the skilled artisan would be more than capable of preparing a food composition having a coating containing a source of powdered blood or a source of frozen blood. For at least the reasons set forth above, Applicants respectfully request that Claims 10-12, 14, 16, 22-24 and 38-46 fully comply with the requirements of 35 U.S.C. §112, first paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 10-12, 14, 16, 22-24 and 38-46 under 35 U.S.C. §112, first paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 10-12, 14, 16, 22-24 and 38-46 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office alleges that Claims 10, 38 and 46 recite the limitation “having a roasted appearance,” which the

Patent Office alleges is “subjective and relative”; Claims 10, 38 and 46 are allegedly not clear as to whether a pigment source and a protein source may both be the same blood; Claim 12 recites “wherein the source of pigments or colorants represents from about 5% to about 20% of the weight of the coating,” which the Patent Office alleges is indefinite; and Claims 11, 16, 22, 39 and 42-43 further include water in the composition, which the Patent Office alleges is not clear because the independent claims contain powdered blood and frozen blood. See, Office Action, page 4, line 11-page 5, line 9. Applicants respectfully disagree and submit that the present claims fully comply with the requirements of 35 U.S.C. §112, second paragraph.

With respect to the limitation “a roasted appearance,” Applicants respectfully submit that the skilled artisan would immediately appreciate the scope of the present claims when reading view of the specification. For example, the specification clearly states that “a roasted appearance” may be obtained “after cooking in a conventional over, i.e., irregular and random browning at the surface of the composition.” See, specification, page 2, lines 17-25. As such, the specification makes very clear that a roasted appearance is defined as an irregular and random browning on the surface of the composition. Additionally, the skilled artisan in the art of food compositions will immediately appreciate what is meant by the phrase “a roasted appearance,” especially when read in view of the present specification.

Regarding the inclusion of a pigment source selected from the group consisting of powdered blood, frozen blood and combinations thereof, and a protein source selected from the group consisting of a plasma, a gluten, a blood and combinations thereof, the skilled artisan would immediately appreciate that powdered blood or frozen blood also comprises protein and, as such, may serve as both a pigment or colorant source, as well as a protein source.

With respect to Claim 12 and the recitation “wherein the source of pigments or colorants represents from about 5% to about 20% of the weight of the coating,” Applicants note that Claim 12 has been canceled without prejudice or disclaimer, as discussed above.

With respect to Claims 11, 16, 22, 39 and 42-43 further including water in the coating composition, Applicants reiterate that the present claims do not recite “a colorant selected from powdered blood, frozen blood and combinations thereof,” as alleged by the Patent Office. See, Office Action, page 3, lines 11-12. Instead, independent Claims 10, 38 and 46 recite, in part, that the coating comprises “at least one source of pigments or colorants selected from the group

consisting of a powdered blood, a frozen blood and combinations thereof.” See, independent Claims 10, 38 and 46 (emphasis added). Accordingly, Applicants respectfully submit that, regardless of whether a “pasty material” is formed from a combination with water or not, the skilled artisan would immediately appreciate that the source of the pigment could be different (e.g., powdered blood or frozen blood) and that the coating of the food composition may have a coating comprising a source of powdered blood or a source of frozen blood. Thus, the skilled artisan would immediately appreciate the scope of the claims when read in view of the specification.

For at least the reasons set forth above, Applicants respectfully request that Claims 10-12, 14, 16, 22-24 and 38-46 fully comply with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 10-12, 14, 16, 22-24 and 38-46 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 10-12, 14, 16 23-24, 38-42 and 44-46 are rejected under 35 U.S.C. §103(a) as being unpatentable over International Patent Publication No. WO 00/65937 to Prasad et al. (“*Prasad*”) in view of U.S. Patent No. 5,567,466 to Dupont-Delhovren (“*Dupont*”) and further view of U.S. Patent No. 3,898,345 to Horrocks et al. (“*Horrocks*”), GB 2 315 399 to Ariss et al. (“*Ariss*”), U.S. Patent No. 3,808,340 to Palmer (“*Palmer*”), U.S. Patent No. 5,059,444 to Ito et al. (“*Ito*”) and U.S. Patent No. 3,073,700 to Ziegler (“*Ziegler*”).

In the Office Action, Claims 22 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claims 10-12, 14, 16, 23, 24, 38-42 and 44-46 above, and in further view of U.S. Patent No. 4,089,983 to Hood (“*Hood*”), U.S. Patent No. 4,508,741 to Corbett et al. (“*Corbett*”), Encyclopedia of Food Science and Technology to Francis (“*Francis*”), U.S. Patent No. 3,434,843 to Durst (“*Durst*”), Dictionary of Food Ingredients to Igoe (“*Igoe*”), U.S. Patent No. 2,567,085 to Stoloff (“*Stoloff*”) U.S. Patent No. 3,965,259 to Coppage et al. (“*Coppage*”) and U.S. Patent No. 3,873,736 to Palmer (“*Palmer II*”).

In the Office Action, Claims 10, 12, 14, 16, 23-24, 38, 40-42 and 44-46 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Horrocks* in view of *Ito*, *Dupont* and *Ziegler*.

In the Office Action, Claims 11 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claims 10, 12, 14, 16, 23, 24, 38, 40-42, and 44-46 above, and in further view of *Prasad*.

In the Office Action, Claims 22 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claims 10, 12, 14, 16, 23, 24, 38, 40-42, and 44-46 above, and in further view of *Prasad, Hood, Corbett, Francis, Durst, Igoe, Stoloff, Coppage* and *Palmer II*. Applicants respectfully submit that the cited references are deficient with respect to the currently amended claims.

Currently amended independent Claims 10, 38 and 46 recite, in part, compositions comprising a coating on a pet food piece having a roasted appearance, wherein the coating comprises sodium alginate in an amount from about 1% to about 2%, at least one of a source of pigments or colorants selected from the group consisting of a powdered blood, a frozen blood and combinations thereof; and a source of proteins selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. The amendments do not add new matter and are supported in the specification at, for example, page 4, lines 27-30; and Example 2.

Applicants have surprisingly found that preparing an animal food piece with a coating including a source of pigments or colorants such as a powdered blood or a frozen blood provides the coating with a roasted appearance after cooking. If the cooking temperature is sufficiently high, the proteins coagulate and fix the pigment, thereby creating a surface which is browned in a scattered manner and thus appears roasted rather than merely colored. See, specification, page 1, paragraph 7; paragraph 8, lines 5-12. Applicants respectfully submit that the cited references fail to disclose or suggest each and every limitation of the present claims.

For example, the cited references all fail to disclose or suggest compositions comprising a coating on a pet food piece having a roasted appearance, wherein the coating comprises sodium alginate in an amount from about 1% to about 2%, at least one of a source of pigments or colorants selected from the group consisting of a powdered blood, a frozen blood and combinations thereof; and a source of proteins selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by independent Claims 10, 38 and 46. At no place in the disclosures do any of the cited references disclose the use of sodium

alginate as a thickener, let alone sodium alginate in the amounts presently claimed. Further, the Patent Office fails to identify any place in the cited references disclosing same.

For at least the reasons set forth above, Applicants respectfully request that Claims 10-12, 14, 16, 22-24 and 38-46 are novel, nonobvious and distinguishable over the prior art.

Accordingly, Applicants respectfully request that the rejection of Claims 10-12, 14, 16, 22-24 and 38-46 under 35 U.S.C. §103, be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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